

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

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<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
	)	
<b>RONALD W. OGLE</b>	)	
<b>d/b/a PALISADES AT DUPONT</b>	)	
<b>SUBDIVISION</b>	)	
	)	
<b>RESPONDENTS</b>		<b>CASE NO. WPC07-0197</b>

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**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "Division") by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "Department").

**II.**

Ronald W. Ogle (hereinafter the "Respondent") is the owner and developer of the Palisades at Dupont Subdivision in Sevier county (hereinafter the "site"), which comprises approximately 159 acres in size and contains approximately 7,000 linear feet of streams and wet weather conveyances. Service of process may be made on the

Respondent at 244 Henderson Avenue, P.O. Box 4216, Sevierville, Tennessee, 37862.

## **JURISDICTION**

### **III.**

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 et seq., the Water Quality Control Act, (hereinafter the “Act”) has occurred, or is about to occur, the Commissioner may issue a complaint to the violator, and may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the State resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the Official Compilation Rules and Regulations of the State of Tennessee, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the Commissioner may delegate to the Director of the Division of Water Pollution Control any of the powers, duties, and responsibilities of the Commissioner under the Act.

### **IV.**

The Respondent is a “person” as defined at T.C.A. § 69-3-103(20) and, as herein described, has violated the Act.

## V.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the Department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the Tennessee Construction General Permit for storm water discharges associated with construction activity (TNCGP) may be obtained by submittal of a Notice of Intent (NOI), a Storm Water Pollution Prevention Plan (SWPPP), and an appropriate fee.

## VI.

Pursuant to Tennessee Code Annotated § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## VII.

Fall Branch and the unnamed tributaries thereto, referred to herein, are “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state are classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications for Surface Waters,” is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*.

Accordingly, these waters are classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

## **FACTS**

### **VIII.**

On December 29, 2004, division personnel visited the site after receiving a citizen complaint alleging that someone was excavating roads for a development. Upon arriving at the site, division personnel observed that approximately 200 feet of road had been cut without installation of erosion prevention and sediment control (EPSC) measures to prevent sediment from entering waterways located on the site. Division personnel observed that sediment had already accumulated in the drainage channels leading from the site, and into the unnamed tributaries to Fall Branch resulting in a condition of pollution.

Upon completion of a file review, division personnel determined that the Respondent had not applied for nor received coverage under the TNCGP for the construction activity, nor had the Respondent applied for coverage under an ARAP for the road crossings.

### **IX.**

Division personnel issued the Respondent a Notice of Violation (NOV) on February 4, 2005, as a result of the violations observed during the aforementioned inspection. In the NOV, division personnel requested that the Respondent immediately stabilize the site, and obtain coverage under the TNCGP by submitting a NOI and

SWPPP. The Respondent was also informed that it would be necessary to obtain coverage for the road crossings under an ARAP.

## **X.**

On February 12, 2005, division personnel received a NOI from the Respondent along with a SWPPP. The SWPPP had not been prepared by a professional engineer or landscape architect as required by the permit and it lacked the appropriate calculations necessary to determine whether storm water detention would be required.

## **XI.**

On February 18, 2005, division personnel issued the Respondent coverage under the TNCGP and assigned it tracking number TNR1301172. However, division personnel requested that a modified SWPPP, signed and stamped by a certified professional engineer be submitted to the Division.

## **XII.**

On August 12, 2005, division personnel inspected the site and observed several items that did not comply with the permit requirements, including failure to maintain EPSC measures and improperly installed EPSC measures. Division personnel also observed that the roadway had not been stabilized, and that sediment had washed down slope during rain events as a result.

### **XIII.**

On August 31, 2005, a second NOV was issued to the Respondent for the violations observed during the August 12, 2005, inspection. Included in the NOV was a request for the Respondent to attend a compliance review meeting (CRM) at the Knoxville Environmental Field Office (K-EFO).

### **XIV.**

On September 7, 2005, the Respondent attended the CRM with division personnel to discuss the violations at the site, the permitting requirements for road crossings and general construction activities, and a timetable for completion of the corrective actions.

### **XV.**

On September 13, 2005, division personnel sent the Respondent a letter summarizing the items discussed in the aforementioned CRM.

### **XVI.**

On March 9, 2006, division personnel inspected the site and observed several items that did not comply with the permit requirements, including failure to install and maintain adequate EPSC measures and placing hydraulic oil in a roadside drainage where it was likely to migrate into waters of the state.

### **XVII.**

On March 21, 2006, a third NOV was issued to the Respondent for the violations observed during the March 9, 2006, inspection.

### **XVIII.**

On October 23, 2006, division personnel inspected the site and again observed several violations of the permit, including failure to properly install and maintain the existing EPSC measures, as well as failure to install adequate EPSC measures to prevent sediment from leaving the site. In addition, division personnel discovered that 3 additional roads had been cut which were not included on the original SWPPP.

### **XIX.**

On October 24, 2006, division personnel issued the Respondent a fourth NOV, citing the Respondent for failure to properly implement and maintain the EPSC measures indicated in the SWPPP. Photographs were included in the NOV showing the specific violations and the pollution from accumulated sediment occurring in the unnamed tributaries to Fall Branch.

In the NOV, division personnel requested that the Respondent provide a revised SWPPP showing properly spaced check dams in the roadside culverts, appropriate erosion control measures for the unstabilized areas, and plans and locations of the sediment traps. Division personnel also reiterated that the revised SWPPP must be prepared and stamped by a licensed engineer or landscape architect as previously requested when coverage was originally issued on February 18, 2005.

**XX.**

On July 16, 2007, division personnel inspected the site and again observed that the Respondent had not properly implemented the EPSC measures indicated in the existing SWPPP. The site remained unstable with inadequate and poorly maintained EPSC measures.

**XXI.**

On July 17, 2007, division personnel issued the Respondent a fifth NOV as a result of violations observed during the July 16, 2007, inspection. In the NOV, division personnel discussed the need for a revised SWPPP and again requested that the Respondent have a licensed engineer or landscape architect prepare the SWPPP and submit it to the Division. Division personnel also cited the Respondent for failure to properly implement the EPSC measures indicated in the existing SWPPP, failure to properly install and maintain the existing EPSC measures, and failure to install adequate EPSC measures to prevent sediment from leaving the site. Photographs were included in the NOV showing examples of the EPSC measures that were in violation, along with suggestions for appropriate stabilization measures. The Division also requested that the Respondent submit a restoration plan to remove the sediment that had accumulated downstream of the site in the unnamed tributaries to Fall Branch.

**XXII.**

On September 17, 2007, the Division received a revised SWPPP for the project signed and stamped by a certified professional engineer.



### **XXIII.**

On November 1, 2007, division personnel performed a follow-up inspection of the site to determine if the Respondent had implemented the corrective actions prescribed within the revised SWPPP. The site still lacked appropriate stabilization and many of the EPSC measures were in need of repair or were not installed properly.

### **XXIV.**

On November 6, 2007, a sixth NOV was issued to the Respondent because of the violations observed during the November 1, 2007, inspection. The violations included lack of maintenance on existing EPSC measures, improper construction and/or installation of EPSC measures, failure to adequately control sediment migration from the site, insufficient protection of culvert inlets and outlets, and an in-stream culvert outlet that was misaligned with the stream channel.

### **XXV.**

On January 31, 2008, division personnel performed an inspection at the site and noted continuing noncompliance with the requirements of the permit. The site still lacked adequate stabilization, the EPSC measures were not adequate to prevent sediment from leaving the site, existing EPSC measures were in need of maintenance, and the many of the curb outlets along the road still lacked appropriate protection of culvert inlets and outlets.

To date, the Division has not received a restoration plan from the Respondent to

remove the sediment from the unnamed tributaries to Fall Branch, as was required by the July 17, 2007, NOV.

#### **XXVI.**

During the course of investigating this case, the Division has incurred damages in the amount of ONE THOUSAND AND FIFTY-NINE DOLLARS AND FORTY-THREE CENTS (\$1,059.43).

### **VIOLATIONS**

#### **XXVII.**

By altering waters of the state without authorization under an ARAP, performing construction activities without coverage under the TNCGP, and failing to comply with the terms and conditions of the TNCGP after issuance of coverage, the Respondent has violated T.C.A. §§ 69-3-108(a)(b), and 114(b), which state in part:

§ 69-3-108(a) states, in part:

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§ 69-3-108(b) states, in part:

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

§ 69-3-114(b) states, in part:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

## **XXVIII.**

By causing a condition of pollution to the unnamed tributaries to Fall Branch, the Respondent has violated T.C.A. § 69-3-114(a).

§ 69-3-114(a) states, in part:

It is unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in Section 69-3-103 (22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

## **ORDER AND ASSESSMENT**

### **XXIX.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENTS to the Respondent:

1. The Respondent shall, within 30 days of receipt of this Order and Assessment, install adequate EPSC measures designed by a professional engineer or landscape architect to prevent further sediment from migrating off the site, and send documentation to the Division that these measures have been installed. Documentation shall be sent, in duplicate, to the manager of the Division's K-EFO located at 3711 Middlebrook Pike, Knoxville, Tennessee 37921, and to the manager of the Enforcement and Compliance Section of Water Pollution Control at 401 Church Street, 6<sup>th</sup> Floor L&C Annex, Nashville, Tennessee 37243.
2. The Respondent shall maintain the EPSC measures to ensure that no additional material leaves the site and enters waters of the state. These professionally designed control measures shall be maintained until final grade and erosion preventive permanent cover are established.
3. Inspection reports shall be sent to the K-EFO on a monthly basis for the duration of the project, and shall include photographic documentation of site conditions. These reports will be due no later than the 15<sup>th</sup> of the month following the

monitoring period. Notification shall be sent, in duplicate, to the manager of the K-EFO, and to the manager of the Enforcement & Compliance Section at the addresses listed above when the site is complete.

4. The Respondent shall, within 60 days of receipt of this Order, submit to the Division a restoration plan, designed by a professional engineer or other qualified professional, to remove the sediment that has accumulated in the unnamed tributaries to Fall Branch. The plan shall include measures to permanently stabilize the stream crossings so that no further material erodes into the streams and shall include (at a minimum); the planting of native woody and herbaceous vegetation along the length of the disturbed portion of the stream, and stabilization of the stream banks with appropriate EPSC measures until the native plants are established. An unimpacted portion of the stream shall be surveyed to determine a typical cross-section for the restoration. This plan shall be sent, in duplicate, to the manager of the Division's K-EFO, and to the manager of the Enforcement and Compliance Section. In the event that the Division requests modification of the plan the Respondent will have 30 days to complete such modification and resubmit the plan.
5. The Respondent shall, within 90 days of written approval of the restoration plan, complete implementation of the plan and send documentation of completion, in duplicate, to the manager of the K-EFO, and to the manager of the Enforcement & Compliance Section at the addresses listed above.

6. The Respondent shall, within 6 months of receipt of this Order, provide documentation of attendance and successful completion of the Department's Erosion Prevention and Sediment Control Workshop, for all employees who manage or oversee construction projects. Notification of completion shall be sent, in duplicate, to the manager of the K-EFO, and the manager of the Enforcement & Compliance Section at the addresses listed above.
7. The Respondent is hereby assessed DAMAGES in the amount of ONE THOUSAND AND FIFTY-NINE DOLLARS AND FORTY-THREE CENTS (\$1,059.43), payable within 30 days of receipt of this Order to the Division of Water Pollution Control, Enforcement & Compliance Section.
8. The Respondent shall pay a CIVIL PENALTY of NINETY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$92,500.00) to the Department, hereby assessed, to be paid as follows:
  - a. The Respondent shall, within 30 days of receipt of this ORDER and ASSESSMENT, pay a CIVIL PENALTY in the amount of EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS (\$18,500.00).
  - b. If, and only if, the Respondent fails to comply with item 1 above in a timely manner, the Respondent shall pay SEVEN THOUSAND DOLLARS (\$7,000.00) to the Division within 30 days of default.
  - c. If, and only if, the Respondent fails to comply with item 2 above in a

timely manner, the Respondent shall pay FIFTEEN THOUSAND DOLLARS (\$15,000.00) to the Division within 30 days of default.

- d. If, and only if, the Respondent fails to comply with item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of ONE THOUSAND DOLLARS (\$1,000.00) per report, not to exceed a total of TWENTY THOUSAND DOLLARS (\$20,000.00) for all reports, payable within 30 days of default.
- e. If, and only if, the Respondent fails to comply with item 4 above in a timely manner, the Respondent shall pay SEVEN THOUSAND DOLLARS (\$7,000.00) to the Division within 30 days of default.
- f. If, and only if, the Respondent fails to comply with item 5 above in a timely manner, the Respondent shall pay FIFTEEN THOUSAND DOLLARS (\$15,000.00) to the Division within 30 days of default.
- g. If, and only if, the Respondent fails to comply with item 6 above in a timely manner, the Respondent shall pay TEN THOUSAND DOLLARS (\$10,000.00) to the Division within 30 days of default.

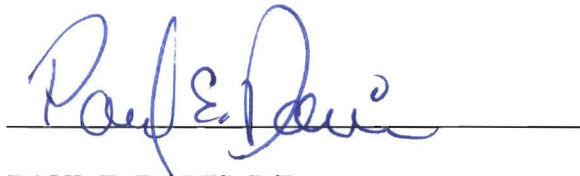
The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request

must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Director of the Division of Water Pollution Control on this 8<sup>th</sup>  
day of April, 2008.

A handwritten signature in blue ink, appearing to read "Paul E. Davis", is written over a horizontal line.

PAUL E. DAVIS, P.E.

Director, Division of Water Pollution Control

#### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".



If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low- income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee

Department of Environment and Conservation, 6<sup>th</sup> Floor L & C Annex, 401 Church  
Street, Nashville, TN 37243.